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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/145,381	09/01/1998	TOM SAUTER	KTWO111889	5899

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EXAMINER

PHAN, HAU VAN

ART UNIT PAPER NUMBER

3618

DATE MAILED: 08/23/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/145,381

Applicant(s)

SAUTER, TOM

Examiner

Hau V Phan

Art Unit

3619

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 July 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☐ Claim(s) 1-21,24-25, 27,29-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 14-21,24,25,27 and 29-34 is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☒ Claim(s) 6-13 is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some \* c) ☐ None of the CERTIFIED copies of the priority documents have been:
- ☐ received.
  - ☐ received in Application No. (Series Code / Serial Number) \_\_\_\_\_.
  - ☐ received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

### Attachment(s)

- 14) ☐ Notice of References Cited (PTO-892)
- 15) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 16) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 17) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 18) ☐ Notice of Informal Patent Application (PTO-152)
- 19) ☐ Other:

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## DETAILED ACTION

### ***Acknowledgment***

1. The request for reconsideration, filed on 7/2/2002 had been considered and entered

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Oyen et al. (5,951,027).**

Oyen et al. in figures 4-4G disclose a shock absorbent in-line roller skate for an inline skate comprising a shoe portion (14) and plurality of wheels (16, 18, 20 and 21) capable of traversing a surface. The skate frame comprises an elongate first structural member having first and second sidewalls (32, 36) depending downwardly from a first upper surface. The lower ends of the sidewalls being spaced to receive wheels therebetween, and a flexible plastic (68), which is capable of vibration dampening formed with the sidewalls of the first structural member for absorbing at least a portion of the vibrational energy transmitted from the surface to the shoe portion when the skate traverses the surface. Oyen et al. fail to show the flexible vibration damping means

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integrally formed with the sidewalls. As regards the integration of elements, where the essential elements are recited in the claims, the unity or diversity of the particular elements or parts are not seen to comprise an inventive concept (see *In re Lockhart*, 90 USPQ 214 (CCPA 1951)). The use of a one piece construction in place of a multiple piece assemblage has been held to be an engineering expedient (see *In re Larson* 144 USPQ 347 (CCPA 1965) and *In re Fridolph*, 50 CCPA 745, 89F.2d 509, 135 USPQ 319). Note, "integral" is defined as formed as a unit with another part.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 2-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oyen et al. as applied to claim 1 above, and further in view of Malewicz (5,092,614).**

Oyen et al. discloses a vibration dampening means and a skate frame, but fails to show the vibration dampening means comprises a contoured portion and the skate frame in arcuate shaped.

Regarding claim 2, Malewicz further discloses that the vibration dampening means comprises a contoured portion (130, 160) of each have the first (32) and second (34) sidewalls of the first structured member (14). The contoured portion (160) has a

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predetermined cross-sectional shape to permit the sidewalls to flex (impliedly disclosed at col. 6, lines 1-15; Malewicz discloses a flexible, lightweight fiberglass polyamide frame) thereby absorbing at least a portion of the vibrational energy associated with traversing the surface. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the skate frame of Oyen et al. with skate frame having the contour portion as taught by Malewicz in order to have more flexibility on the vibration dampening means.

Regarding Claim 3, Malewicz further discloses that the cross-sectional shape of the first and second sidewalls is substantially arcuate (see fig 6) such that the contoured portion of the sidewalls flexes to absorb at least a portion of the vibrational energy.

Regarding claim 4, Malewicz further discloses that the arcuate cross-sectional shape of the first and second sidewalls is substantially C-Shaped in configuration (see fig 2), the arcuate cross-sectional shape having an upper end (200) spaced from a lower end (110) by a concave portion (136).

Regarding claim 5, Malewicz further discloses that the concave portion (136) of the first sidewall (32) faces the concave portion (166) of the second sidewall (34) in an opposed manner such that the first structural member (12) is tubular.

***Allowable Subject Matter***

1. Claims 14-21, 24-25, 27, 29-34 are allowed.

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2. Claims 6-13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

3. Applicant's arguments with respect to claims 1-9, 14-15, 20-21 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hau V Phan whose telephone number is 703-308-2084. The examiner can normally be reached on 7:30AM-4:00PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Johnson can be reached on 703-308-0885. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

HP

HP

8/20/2002

  
BRIAN L. JOHNSON  
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8/22/02